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BY THE SAME AUTHOR

RELIGION & HUMAN INTERESTS

CONTENTS: The Meaning of Religion.—Religion and the Individual.—Religion and the Family.—Religion and Secularism.—Religion and Conscience.—Religion and Business.—Religion and Liberty.—Might against Right.—The New Code of Canon Law.—The Canon Law Code and Catholic Education.

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ON THE MORALS OF TO-DAY

By REV. THOMAS SLATER, S.J.

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PREFACE

THE chief cause of most of our modern troubles is not economic nor political nor social, it is moral. People still call themselves Christian, but to a great extent they have ceased to be Christian in faith and practice. The remedy for all our present troubles cannot be found in economics or politics or in a new social order, it can only be found in a return to real Christian faith and practice. The short papers which make up this little book were written in that conviction. They are here offered to a wider public in the hope that they will help to produce the same conviction in a wider circle of readers.

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CONTENTS

CHAPTER		PAGE
I.	THE MORALITY OF ANTI-CONCEPTIVE DEVICES	1
II.	THE SHORT FORM OF EXTREME UNCTION	14
III.	AFFINITY AND THE NEW CODE	25
IV.	THE NEW CODE AND THE "IMPEDIMENTUM CRIMINIS"	34
V.	FALSE ACCUSATION OF SOLICITATION AND THE NEW CODE	42
VI.	THE NEW CODE AND THE "IMPEDIMENTUM DISPARITATIS CULTUS"	50
VII.	SOCIALISTS, CHRIST, AND THE CHURCH	59
VIII.	THE PROFITEERING ACT, 1919	63
IX.	STRIKE ETHICS	66

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ON THE MORALS OF TO-DAY

CHAPTER I

THE MORALITY OF ANTI-CONCEPTIVE DEVICES

THE recently issued Report of the British National Birth-rate Commission on the declining birth-rate contains much that is of great interest to Catholics, and especially to the clergy. It is very plain-spoken indeed on certain sexual matters which have suffered somewhat in the past from a conspiracy of silence. Just now the pendulum seems to be swinging in the opposite direction, and excess of plain speaking threatens to produce greater evils than ever silence produced. Very difficult and delicate problems connected with sex morality are being openly discussed in the daily and weekly press, and the public are invited to form their own opinions on the questions raised. The writers know well on which side popular sentiment is likely to be found, and naturally they adopt a tone and maintain views which will be acceptable to the majority of their readers. The questions certainly are of the greatest importance, and should be treated somewhere. That is my reason for offering this contribution to the *Ecclesiastical Review*, which addresses itself to an exclusive circle—that is, to priests, whose influence in matters of this kind is likely to be effective for good.

The above-mentioned Report corroborates what was well known already, that the birth-rate of England and Wales has declined by about

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one-third during the last forty years. It is still declining, and in all probability we have not touched bottom yet by any means. Some authorities profess to find matter for satisfaction in this fact. Dr. Havelock Ellis has publicly reproved the "panic-stricken fanatics" who preach to the people that the birth-rate is falling and the nation is decaying. The first witness examined by the Commission was Dr. C. V. Drysdale, the Secretary of the Malthusian League. Dr. Drysdale took the opportunity to say something about the Malthusian League, which he represented, and of which he is the Secretary. He told the Commission that the League has carried on a propaganda in favour of family restriction ever since the Bradlaugh and Besant trial in 1876; the time at which the birth-rate began to decline in England and Wales. The central principle of the Neo-Malthusian movement is the doctrine of Malthus, that unrestricted reproduction inevitably leads to pressure upon subsistence, with its consequences — poverty, starvation, prostitution, disease, and war. At first, English Neo-Malthusians confined their operations to expositions of the economic, moral, and eugenic aspects of the population question. Until 1913 they refused to give information concerning preventive devices. In that year, however, says Dr. Drysdale, "following upon recent authoritative medical pronouncements, in favour of such devices, the League has instituted a practical propaganda, with special precautions against abuse." He gives a descriptive definition of Neo-Malthusianism which embodies the principles to which the League has constantly adhered:

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"Neo-Malthusianism is an ethical doctrine based on the principle of Malthus, that poverty, disease, and premature death can only be eliminated by control of reproduction, combined with a recognition of the evils inseparable from prolonged abstention from marriage. It, therefore, advocates nearly universal early marriage, together with a selective limitation of offspring to those children to whom the parents can give a satisfactory heredity and environment, so that they may become desirable members of the community. It further maintains that a universal knowledge of hygienic contraceptive devices among adult men and women would in all probability automatically lead to such a selection through enlightened self-interest, and thus to the elimination of destitution and all the more serious social evils, and to the elevation of the race."

Open-air campaigns have been held to disseminate these views in the large towns, and a pamphlet is being distributed gratuitously describing the most hygienic methods of limiting families. The ordinary layman can hardly be expected to form a sound judgment on these important questions when they are proposed to him in that guise. It makes one thank God devoutly for the guidance which the Church gives us, and it makes us realize the necessity of that guidance.

I do not wish to suggest that the Neo-Malthusian League is alone responsible for the decline in the birth-rate. It is clear from the Report that direct procuring of abortion, and venereal diseases, such as gonorrhœa and syphilis,

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are largely responsible as well. The Neo-Malthusians deplore these causes, as all sensible men must do. Nor are they alone in their advocacy of such preventive devices as they consider harmless. The Report acknowledges that "among conscientious and high-minded laymen and women in the Anglican Church there are many who openly justify the use of preventives," and this attitude has become far more common during the last few years (page 64). The Report further adds:

> "We regret that we are unable to present a definite pronouncement as to the physical consequences of the use of these devices. The printed evidence which follows does not enable a dogmatic statement to be made as to these; and in view of the fact that medical investigation on this subject is difficult and in large measure has only recently been made, it is not surprising that no definite medical conclusion can be drawn" (page 57).

Twenty-four of the Commissioners signed an Addition to the Report which, among other things, acknowledges that there are some questions "which deserve more thorough and general consideration than we have been able to give to them." Among these is the following: "Is any mode of restriction except voluntary abstinence from marital relations moral and religious?" There seems to be a general consensus of opinion that there is one other lawful mode of restriction besides voluntary abstinence from marital relations. Married couples may, if they like, limit intercourse to the inter-menstrual periods, when

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conception is less likely to take place. The Anglican Bishop of Southwark, in his evidence given before the Commission, expressed the opinion that this practice is unlawful. He failed, however, to substantiate his view, and it is opposed to the Memorandum drawn up by a Committee of Anglican Bishops and endorsed by a majority of their number. Medical authorities are not agreed as to whether the practice is likely to be effectual in preventing conception, but there seems to be no valid reason against it from the point of view of moral theology. I do not propose to discuss this question further. Catholic moral theology clearly condemns the use of all anti-conceptional methods by married people who use their marital rights. There is a more heinous malice in the voluntary procuring of abortion after conception than in the use of anti-conceptive devices. Some anti-conceptive devices are more injurious than others. But there are none that are not immoral and wrong, according to the teaching of Catholic moral theology. Can this be shown by reasons that will appeal to the ordinary man or woman of sound common sense? That is what I want to show in this paper.

I have already referred to the article contributed to an English weekly newspaper by Dr. Havelock Ellis. He is of considerable standing in the world of science, and so his views are of interest to us. He maintains that small families and a falling birth-rate are not only not evil, but that they are a positive good. They represent an evolutionary rise in nature and a higher stage in civilization. It is the lower forms of animals that are most prolific and the higher forms that are less so. Vast quantities of lower

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forms of life are born, but natural selection, by its rough methods, takes care that only the fittest should survive. In the higher forms of animal life quality takes the place of quantity. The elephant has far fewer offspring than the herring, but it more than makes up for the difference by greater parental care. This evolutionary process becomes conscious and deliberate in man without ceasing to be natural. We will here give his own words:

> "It is, then, that we have what may properly be termed *Birth Control.* That is to say, that a process which had before been working steadily through the ages, attaining every new forward step with waste and pain, is henceforth carried out voluntarily in the light of the high human qualities of reason and foresight and self-restraint."

This statement seems to be in direct opposition to fact. The natural process kills off the unfit in the struggle for life, and so only the fittest survive. A couple who use preventive devices use an unnatural process without the means of knowing what the result is to be. Of the possible children that they might have had, the two or three that are born may very possibly be the weakest and the least gifted by nature. At any rate the parents can exert no choice as to the quality. They can indeed limit the quantity by restrictive devices, but if we follow the teaching of experience the two or three children are as likely as not to be spoiled by over-indulgence and by having all the hardships of life removed out of their path. The best and the strongest characters, as a rule, are developed in the bosom of

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large families, which preclude pampering and necessitate a certain simplicity of life. It is a mere abuse of language to speak of the use of preventives as the employment of reason, foresight, and self-restraint. It is irrational, blind, and the absence of all restraint.

It is difficult to understand how Dr. Havelock Ellis could possibly maintain that a falling birth-rate is not an evil but a positive good. A people living in simple conditions of life without rivals or powerful neighbours to fear might perhaps be satisfied if the birth-rate and death-rate more or less balanced. There would be no great cause for alarm if such a balance of births and deaths were the effect of natural causes. But those are not the conditions of the problem before us. There is a keen rivalry among the great nations of the world, and the declining birth-rate among the chief European nations is largely due to preventive devices. The process has been going on in France for something like two centuries, and France furnishes our great object-lesson of its effect on national welfare. In the seventeenth century France was the acknowledged leader among the nations of Europe. At that time her population was 38 per cent. of the total population of the chief European nations. At the end of the eighteenth century it had fallen to 27 per cent. In 1815 it was 20 per cent.; in 1880 it was 13 per cent., and now it is about 11 per cent. Instead of being the most populous nation of Europe, France now takes the sixth or seventh place. It is patent to everyone what this has meant in the Great War. Man for man, the Frenchman believes himself superior to the German, but the forty millions of France are no

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match in arms against the sixty-five millions of Germany. Quantity of population undoubtedly is a factor of great influence on national welfare, and a declining birth-rate can only be viewed with alarm by a true and far-sighted patriot.

Moral turpitude cannot be gauged by the physically evil effects which follow from it, and can be verified. An evil desire to commit adultery does not entail the physical and verifiable evils that follow from actual adultery. And yet "Whosoever shall look on a woman to lust after her hath already committed adultery with her in his heart." The moral turpitude of an evil desire is the same in kind as that of the evil act itself. The ancient Romans used emetics after one dinner in order to be able to enjoy the pleasures of a second and third on the same day. The physically evil effects of the practice were perhaps not very serious if it was not indulged in too frequently. There are few that would not allow that such an action is disgusting, unnatural, and inordinate. It is immoral and wrong apart from any physically evil effects that it may have. If it were indulged in very frequently it would lead to a permanent derangement in the action of the stomach. These principles are applicable in a special degree to sexual excesses. In the natural use of marriage a legitimate outlet is provided for the strongest of the instincts and appetites of mankind. A sense of satisfaction follows upon the use of marital rights. There may be intemperance in such use, and intemperance will be the cause of physical evil, more or less serious. But the temperate use is accompanied with satisfaction, and after a time leads to a gradual weakening of the sexual

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appetite. This is not true of the abuse of the sexual appetite. Let us take a well-known example which has been studied by theologians and by medical men for centuries. A solitary act or two of self-abuse may not have any serious physical evil as its consequence. But if constantly repeated, it destroys health of body and of mind. It is generally accompanied by some physical pleasure, but it does not give complete satisfaction. This leads to a constant temptation to repeat the act, repetition leads to a strengthening of the habit and the craving for indulgence, and the yielding to this leads to a gradual weakening of self-control, and to the ruin of health of mind and body. This is the rational argument by which theologians defend and illustrate their teaching concerning the deadly malice of one sin of self-abuse.

When preventive devices are used in sexual intercourse there is self-abuse and abuse of the other party as well. The act is satisfying for neither of them except for the moment; an appetite is created, not satisfied, and the natural consequences of self-abuse follow for both to a greater or less extent. There are not the same facilities for over-indulgence, and so the evil effects of the practice are not so rapid and conspicuous, but in a measure they are there. This is fully borne out by the first-hand experience of several of the medical witnesses examined by the Commission. Thus Dr. Amand Routh said:

> "I have no doubt that prevention of maternity by *artificial* methods invariably produces physical, mental, and, I think, moral, harm to those who resort to it—to one, or probably to both. . . . I am sure it

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does harm to both, if they both agree to it. The act is incomplete; it is not a spontaneous act; and if the act ceases before the proper crisis, as it were, the nervous system suffers enormously if the habit is continued for long. And the result often is that there is a great deal of congestion produced in the woman, at all events. I know nothing about the physical results in the case of the man, but in the woman the result is that the pelvic organs become congested and catarrhal, the womb becomes enlarged, and the result is that later on, when the parents are perhaps better off and want a child, they are not able to have one" (page 247).

The Chairman, the Very Rev. Dean Inge, put a question to the witness on this subject. He asked: "You say in your lecture, 'Every method of artificial prevention of conception is harmful in both its physical and moral effect.' That is, of course, by no means universally admitted, is it? It is a matter of very great importance to this Commission." Dr. Routh answered:

> "Well, personally, I believe that every *artificial* method does do physical harm, with the only exception that supposing the husband uses letters, for instance, I do not think the harm is very much to the wife, except that she misses the stimulating effect of the semen itself. And there is not the least doubt that that has a very powerful effect; it is absorbed to a certain extent, and seems to stimulate and even to nourish the woman in a way which we do not at present understand."

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"I think," pursued Dr. Inge, "it will be generally admitted, as far as I can make out, that withdrawal is mischievous; but we have been told that the use of these other things which you mention is harmless to both sexes. That is what I want to get at." Dr. Routh replied:

> "Well, I am sure that people who use letters suffer from it in time. It is not the same thing. It is difficult to explain how it does act, but I am only speaking of practical experience with one's patients who have adopted these methods. To begin with, supposing that both the man and the woman are very much averse to having a child. It is not a normally conducted physiological act at all; it is an act accompanied more or less by fear the whole time, and the nervous system cannot stand being, thus, in anything rather than the passive attitude of affection which ought to exist."

Asked if that effect was not mental rather than physical, the witness replied: "It is mental, but it has a physical effect. You cannot have the nervous system in this state of dread without a physical effect."

A further question was put: "You would agree, I take it, that there is a difference of opinion among experienced gynecologists on this point, as to the deleterious physical effects of the use of these artificial means?" To which Dr. Routh replied: "I thought everybody considered they were more or less harmful" (page 254).

Another witness of experience, Dr. Mary Scharlieb, was asked: "Are you of opinion that injury does result from the use of these preven-

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tives?" To which she replied: "No physical injury. In the majority of cases they cannot do physical harm to anyone. From the use by the wife of a douche or a quinine pessary, or from the use by the husband of a sheath, I do not see that any physical injury results, but I am sure there are recondite effects upon the nervous system."

To the question: "Having regard to hysteria and allied diseases, would you not agree that although physical injury may not be present, yet nevertheless serious injury does arise?" The witness replied, "Certainly" (page 271).

When, therefore, the Commissioners express regret in their Report that they are unable to present a definite pronouncement as to the physical consequences of the use of preventive devices, we may presume that they use the word "physical" in a restricted sense as distinguished from nervous and mental evils. Catholic writers on Pastoral Theology have long insisted on the grievous harm done to body and mind by the use of preventive devices. An increase of fornication, too, is said to take place when the fear of offspring is removed by the use of preventive methods.

Clement of Alexandria lived at a time of great moral depravity, and Alexandria was probably as bad as any other city of the Roman Empire. He was acquainted with all the learning of his time, and especially was he a keen student of human nature. In an interesting passage he tells us that defilement of the marriage bed leads to loss of mutual respect and of conjugal love. I will finish my article by a translation of a few sentences:

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"It is not shameful for us to mention for the instruction of our hearers the parts in which the conception of the fœtus takes place and which God was not ashamed to make. . . . Now, marriage is the desire for the procreation of children, not the inordinate effusion of seed, which is contrary to precept and against right reason. The whole of our life will proceed according to nature if, from the beginning, we curb our appetites and do not destroy by wicked and malicious devices the race of mankind which is born of divine providence. For those women who, to conceal fornication, use destructive drugs, which lead to utter ruin, lose all humanity, together with the fœtus. . . . If uprightness should be practised, much more should uprightness be shown toward your wife by avoiding intercourse which is not upright; and let there be trustworthy evidence coming from your home that you deal chastely with your neighbours. For nothing can be deemed upright by her with whom uprightness in those vehement pleasures is not proved by irrefragable evidence, as it were. The love which rushes headlong toward intercourse lasts but a short time and grows old with the body; sometimes it grows old even before the body, since lust becomes torpid when whorish lusts have vitiated the temperance of marriage. For the hearts of lovers are winged, and the impulses of love are often extinguished in repentance, and love often turns to hate when satiety has felt reproof."*

* Pædagogus, ii. 10.

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CHAPTER II

THE SHORT FORM OF EXTREME UNCTION

IN the last issue of the *I. E. Record** an interesting question concerning the administration of Extreme Unction was proposed by "Religiosus." In April, 1906, the Holy Office determined a short form for the administration of the sacrament in case of imminent danger of death. What is to be done in a case where this short form has been used, and the sick person does not die immediately? I had expressed the view that in such a case the ordinary ritual form should at once be gone through by the priest. "Religiosus" rejects this opinion, and favours that which he says is held by Father Noldin. He then asks for the editorial solution of the question which, with very courteous expressions to myself, is given on the same side.

The question is important and very practical, and I propose to discuss it at greater length than I have already done elsewhere.

We must, first of all, be clear as to what was done and what was not done by the decree of the Holy Office of April 25, 1906. On that occasion the Holy Office did what it was asked to do. It had been asked to determine one short form to be used in the administration of Extreme Unction in a case where death was imminent. The question had been discussed by theologians for centuries. Opinions were various and numerous. They are briefly summed up for us by O'Kane in his well-known *Notes on the Rubrics of the*

* See *I. E. Record*, November, 1915, p. 525.

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Roman Ritual. In discussing what belongs to the essential form of the sacrament of Extreme Unction this author says:

> "It is agreed that the word *sanctam* is not essential; and it is probable that the words *et suam piissimam misericordiam* are not essential. Hence the form expressed thus would be valid: *Per istam unctionem indulgeat tibi Dominus quidquid deliquisti per visum, auditum,* etc. It is commonly admitted that the word *deliquisti,* or some other of the same import, is essential. But it is not equally certain that the expression of the senses is essential. We have seen that when, in case of necessity, a single form is used, it should contain an expression of each sense after the word *deliquisti,* but many are of opinion that it suffices for the validity to express them in general *quidquid deliquisti per sensus.* Some go still further, and contend that it is not necessary to express the senses at all, and that the words *Indulgeat tibi Deus* alone are essential; for the act of anointing, they say, precludes the necessity of using the words *per istam unctionem,* while the word *indulgeat* sufficiently implies *quidquid deliquisti.*"*

The Holy Office was asked, not to settle the theoretical question as to what words in the ordinary form of Extreme Unction were essential and what were not essential. It was asked to approve one short form which might be used in case of necessity. The Holy Office granted the

* *Notes on the Rubrics,* n. 900.

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request by decreeing that the form—*Per istam sanctam unctionem indulgeat tibi Dominus quidquid deliquisti. Amen.*—would be sufficient in a case of real necessity. On April 26, 1906, Pope Pius X. approved this decree.

There was no question about settling any theoretical opinions as to whether one anointing was valid or not, nor was there any question of settling the doubt as to whether the anointing of the five senses was essential to the validity of the sacrament. The petitioner asked for the solution of a practical difficulty. He knew from the rubrics of the Roman Ritual what was to be done in ordinary cases of imminent danger of death. The rubric says:

> "Si quis autem laborat in extremis, et periculum immineat ne decedat antequam finiantur Unctiones, cito ungatur incipiendo ab eo loco *Per istam sanctam Unctionem, etc.*, ut infra: deinde si adhuc supervivat dicantur orationes prætermissæ suo loco positæ."

But cases sometimes happen where death seems so near that there is not time to give the separate anointings with their appropriate forms. Hitherto there was no authoritative guidance as to what was to be done in such a case as that. The matter was left to the discussions of theologians. The theologians commonly taught that the minister of the sacrament should apply a single unction with a single form expressing all the senses. They allowed, and expressly taught, that it was not certain that such a single anointing was valid. They taught that it was highly probable that it was valid, and they knew that Bene-

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dict XIV. had given them solid grounds for thinking so. But still, as there is question of the validity of a sacrament which may not lawfully be exposed to risk, they taught with St. Alphonsus that whenever in cases of real necessity Extreme Unction had been given with one general form, the separate anointings of the senses should afterwards be supplied with their appropriate forms. As we have seen already, the theologians were not agreed as to what the general form used in a case of real necessity should express. Some said that it should express all the five senses separately; others thought that it would suffice if a word expressing the senses generally were employed; others saw no necessity for either special or general mention of the senses. On this point alone was the Holy Office asked for guidance. Some good priest or bishop was anxious to do all he could in a case of extreme necessity when death was imminent. In such a case of necessity he was justified, as he knew well, in administering the sacraments with a probability of their validity. He was justified then in using one general form for Extreme Unction, with the obligation of supplying the ritual form afterwards, according to the prescriptions of the ritual and the unanimous teaching of theologians. His only doubt was as to what the general form should express. Theologians differed on the point, and so he asked the Holy Office to give its decision. The request was granted, and the Holy Office decided that it was not necessary to express the senses separately, nor even to mention them under some general term, but that in a case of real necessity it was sufficient for the minister to say: *Per istam sanctam unctionem*

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indulgeat tibi Dominus quidquid deliquisti. Amen.

The Holy Office does not say that this one short form is sufficient for validity. It simply declares that those words are sufficient for the purpose intended, and that no more need be used in order to secure, as far as is possible under the circumstances, the benefits of a probably valid administration of the sacrament. That is all that the decree expressly determines, and I do not see what more can be extracted out of it. To use the expression of Dr. O'Donnell, I am anxious to give the decree its full force, but I do not see what more force it can have. This point is of capital importance in the discussion, and I will try to make it clearer by taking an illustration from the sacrament of Penance.

Priests are sometimes called to attend cases where there is imminent danger of death, accompanied by a state of apparent unconsciousness. In such cases they give absolution conditionally, and they know that in the circumstances absolution is probably valid. If the danger of death is imminent a priest will make use of the shortest form of absolution which is compatible with the validity of the sacrament. Theologians are not quite at one as to what words a short form of absolution should necessarily contain. Some think that *Absolvo a peccatis tuis* is sufficient, while others deny it. Some hold that *Ego te absolvo* is sufficient, while others say it is not. The common opinion holds that the invocation of the Blessed Trinity does not belong to the necessary essence of the form. We can imagine a priest asking the Holy Office to determine a short form of absolution to be used in case of

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necessity, and we can imagine the Holy Office acceding to his request. If the Holy Office determined that in cases of real necessity it is sufficient for the priest to say *Absolvo te a peccatis tuis*, the priest, of course, would be perfectly safe in using only those words. In cases of real necessity he would do his duty by the sick person if he gave absolution with that form without manifest confession. But the supposed decree of the Holy Office would not make the absolution certainly valid. We must say the same, as it seems to me, about the decree of the Holy Office concerning the short general form for the administration of Extreme Unction in cases of true necessity.

Even if the ordinary rules of interpretation permitted us to say that by determining the short form, the Holy Office had decided what was sufficient for the validity of the sacrament, we should not be justified in asserting that what was doubtful before the decree is now absolutely certain. Such decrees as that with which we are dealing are not infallible and irreformable utterances of the Holy See. They are practical and safe rules for the cases to which they refer, but, as Santi says, quoting another eminent Roman canonist:

> "Responsa hujusmodi non esse infallibilia et irreformabilia. Nam infallibilitas uni Romano Pontifici promissa est; responsa autem hæc non sunt actus Papales, et licet Summus Pontifex eadem probet, tamen semper retinent naturam decisionis Sacræ Congregationis et uti talia Summus Pontifex probat et vulgari jubet."*

* *Praelectiones juris canonici*, lib. 1. tit. 31, n. 70.

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So that, even if the decree under consideration had determined a short form sufficient for validity, as "Religiosus" implies, that would not settle the question and make the opinion which it favoured certain. There would still be room for the opinion which St. Alphonsus says is probable —that the anointing of the five senses with the separate forms is necessary for the validity of Extreme Unction, and as there is here question of the validity of the sacrament, this safer opinion must be followed in practice. The following argument seems to me not to be destitute of weight.

The Sacred Congregation determined a short form which it declared to be sufficient in case of real necessity, that is, in a case where there is not time to give all the anointings, with their separate forms. If in a particular case the sick person does not die immediately, but continues to live, so that there is a probability of being able to receive the sacrament according to the form of the ritual, the case does not come under the decree. The decree contemplates a case where nothing else can be done. In this case, however, something more can be done. It is quite possible that what would be valid in a case where nothing more could be done, would be invalid in another case where more could be done. This also may be illustrated from the sacrament of Penance. A sick person who sends a message to a priest asking him to come and hear his confession, and before the priest arrives becomes unconscious, is to be absolved absolutely in that state, according to many authors. They gather this from the Roman ritual, and draw the conclusion that such absolution is certainly valid. And yet, under

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other circumstances, confession made through an interpreter or messenger to an absent priest would certainly be invalid, as theologians conclude from the absolute prohibition of Clement VIII.

Those are the chief reasons why I still think that the decree of the Holy Office, April 25, 1906, does not greatly modify pre-existing opinions on the subject. It seems to me still that if Extreme Unction has been administered with one general form, the ordinary ritual form must be added, because, according to the common teaching of theologians, voiced by St. Alphonsus, administration under one general form is only probably valid. This also seems to me to be prescribed by the new editions of the *Roman Ritual*, which print the short form approved in 1906, but also retain the rubric quoted above, which prescribes that when only part of the rite has been followed in case of necessity and imminent danger of death, the rest should be afterwards supplied if the sick person continue to live. Such anointing of the five senses would be, according to the present legislation of the Church, as it seems to me, not unlawful, as Dr. O'Donnell says.

I may refer to the article reprinted in my *Questions of Moral Theology* on the "Repetition of Extreme Unction," to show that I have devoted some attention to the history of Extreme Unction. I know of nothing in the history of the subject which calls for any modification of my views, and so I do not propose to make any change in what I wrote in my "Manual" on the subject.

If we consult the theologians who have written

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on the point in question after the publication of the decree of 1906, I find I am in very good company. It is true that Father Noldin holds that the decree settles the question as to the validity of one anointing with a single general form, but as to repeating or supplying anything afterwards, he does not say what "Religiosus" makes him say. "Religiosus" quotes him as saying:

> "If the patient rally, nothing is to be repeated."

The words used by Father Noldin are:

> "Si sacramentum in periculo mortis unica unctione collatum fuerit, postea cessante periculo nihil repetendum vel supplendum est."

Of course when the danger has ceased, when the sick person is no longer in danger of death, nothing should be repeated or supplied. But, according to the new edition of the Ritual, if the sick person continue to live, though still dangerously ill, the prayers at least should be supplied, and, in my opinion also, the separate anointings, whenever one general form has been used previously.

The editor of the *Acta Sanctae Sedis* commented on the decree when it was issued, maintaining the opinion which I have defended. He says:

> "Sed cessante periculo præsertim si ægrotus alia sacramenta secure suscipere non potuit, sub conditione repetendæ sunt singulæ unctiones in singulis sensibus, sub suis particularibus formis atque addendæ

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sunt simul omnes orationes omissæ. Quæ norma apprime congruit præscriptionibus Ritualis Romani, et quatenus melior fiat dispositio suscipientis sacramentum, ad majus gratiæ augmentum obtinendum concurrit."*

Father Vermeersch writes:

"Quodsi peracta summaria ista unctione, tempus superfuerit, consuetæ singulorum sensuum unctiones sub longiore forma peragere non negleget [sacerdos]."†

Tanquerey says:

"Ad integritatem vero Sacramenti eas [unctiones in singulis sensibus] perficiendas esse censemus (sub conditione) quamvis alii aliter sentiant."‡

Father Ferreres writes:

"Sed si tempus post peractam hanc unicam unctionem supersit, videntur fieri posse sensuum unctiones cum forma singulis propria ad pleniorem sacramenti significationem exprimendam."§

These quotations show that I am not singular in my opinion, and the arguments show, I think, that the opinion is well based.

Canon 947 of the New Code of Canon Law lays down the following rule:

"In case of necessity one anointing is sufficient on one sense or better on the fore-

* *Acta Sanctae Sedis*, 39, 275.
† *Periodica*, 1911, p. 242.
‡ *Brevior Synopsis*, n. 1260.
§ Vol. ii. n. 683.

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head with the prescribed short form, but the obligation remains of supplying the other anointings if the danger ceases."

To a question whether the other anointings were to be supplied conditionally or not, the Holy Office answered that they were not to be supplied conditionally.*

* *A. A. S.*, ix., p. 178.

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CHAPTER III

AFFINITY AND THE NEW CODE

THE Church has frequently changed her discipline with regard to affinity, and the drastic changes on the subject which have been inserted into the new Code of Canon Law are a good example of the fearlessness with which the Church uses her authority when changed circumstances seem to require it. The ecclesiastical law now in force on the subject is stated in the new Code in a few simple but far-reaching canons.

CANON 97.

"§ 1. Affinity arises from valid marriage whether ratified only or ratified and consummated.

"§ 2. It exists only between the man and the relations by blood of the woman, and also between the woman and the relations by blood of the man.

"§ 3. It is so reckoned that those who are the relations by blood of the man are the relations by marriage of the woman in the same line and degree, and *vice versa*."

CANON 1077.

"§ 1. Affinity in the direct line annuls marriage in every degree; it annuls it in the collateral line to the second degree inclusively.

"§ 2. The impediment of affinity is multiplied:

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"1°. As often as the impediment of consanguinity is multiplied from which it proceeds;

"2°. By the successive repetition of marriage with a relation of a dead spouse."

The first section of Canon 97 changes the very notion of affinity as it has been understood in ecclesiastical law from very early times. Practically it adopts the definition of affinity which was accepted in Roman Law, and which has been followed by most modern legal systems. Affinity therefore, now, in ecclesiastical law arises only from ratified Christian marriage. It does not arise from the marriage of unbaptized persons, and probably not even from the marriage of a baptized person with another not baptized. It does not arise from carnal intercourse, whether licit between married people, or illicit between those who are not married. This simple change sweeps away some very irksome difficulties which frequently occurred under the old ecclesiastical legislation. According to the law as it existed before the new Code came into force, and which still governs cases which happened before that date, affinity arose only from carnal intercourse. It annulled marriage to the fourth degree when it arose from lawful carnal intercourse, and to the second degree when it arose from unlawful intercourse. Theologians taught, and the doctrine was confirmed by many decisions of the Roman Congregations, that although the diriment impediment of affinity did not affect unbaptized persons, yet carnal intercourse between unbaptized persons produced a natural bond which became the diriment impediment of affinity after

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the reception of baptism. Moreover, if a married man committed adultery with a near relative of his wife, he thereby contracted affinity with his wife which deprived him of his marital rights until dispensed by lawful authority. All these difficulties are now swept away and ecclesiastical law on the subject of affinity has been brought into greater harmony with the civil law of the country.

These great and beneficial changes in the law of the Church have their counterpart in the past history of this diriment impediment of marriage.

Natural feeling and the necessary intimacy between members of the same family exclude the idea of marriage among those who are closely related by blood. Experience, too, proves that the physical effects of such marriages are evil. By marriage one spouse becomes a member of the family of the other spouse. The reasons which militate against the marriage of those who are closely related by blood, militate also to some extent against the marriage of those who are related to each other by affinity. However, according to the received opinion, the natural bond which exists between those who are related by affinity is not sufficient to constitute a diriment impediment of marriage by the natural law. In other words the diriment impediment of affinity, even in the direct line and much more in the collateral line, is of positive, not of natural law. The positive legislation of most civilized peoples has recognized the impediment. The Mosaic law* enumerated the persons related to each other by affinity who were forbidden to marry. In much the same way the old Roman law for-

* Leviticus xviii. 8 ff.

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bade marriage between certain persons closely related by affinity. During the first centuries of the Christian era the Church seems to have adopted the Mosaic and Roman laws on this subject. Very soon, however, she began to show that she was conscious of having legislative authority on such matters, and she began to make laws of her own. The Mosaic law allowed a man to marry a deceased wife's sister, and if a woman's husband died leaving her childless it obliged the husband's brother to marry her. At the beginning of the fourth century the Church forbade such marriages as these. The 61st Canon of the Council of Elvira in Spain (A.D. 305 or 306) enacted that: "If a man after the death of his wife marries her sister, let him abstain from communion for five years." The second Canon of the Council of Neocæsarea (A.D. 314-325) decreed that: "If a woman has married two brothers she shall be excommunicated till death." When St. Basil the Great was Archbishop of Cæsarea he forbade a man to marry his deceased wife's sister. Diodorus of Tarsus reprimanded him for this, but St. Basil defended himself by saying that such marriages had always been prohibited at Cæsarea.*

In the old law of pagan Rome lawful marriage was regarded as the chief ground of affinity in so far as affinity was an impediment of marriage. Yet even in Roman law affinity arose from certain other unions besides lawful marriage. As Wernz says:

> "Affinitas jure Romano potissimum constituit impedimentum matrimonii quatenus

* Hefele, *Histoire des Conciles*, I., 161.

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> orta est ex nuptiis legitimis rite contractis, etsi non consummatis; veruntamen etiamsi ex contuberniis servorum originem duxit, matrimonii celebrationi obstabat. Nam L. 14, § 3, de rit. nupt. XXIII., 2 statuitur: 'Item, tamen, quod in servilibus cognationibus constitutum est etiam in servilibus affinitatibus servandum est, veluti ut eam quae in contubernio patris fuerit, quasi novercam, non possim ducere.' Imo, vel de ipsis concubinis (*i.e.*, ex significatione hujus vocis in jure Romano) L. 4, de nupt. V. 4, decernitur: 'Liberi concubinas parentum suorum uxores ducere non possunt, quia minus religiosam et probabilem rem facere videntur. Qui si contra hoc fecerint crimen stupri committunt.'"*

Still, in spite of these exceptional cases, affinity in general was regarded as arising from lawful marriage alone according to Roman law. During the first centuries of the Christian era there are no indications that Christians held any other view on the subject. The first sign of a change of opinion is met with in a passage from St. Augustine *Contra Faustum.* It was embedded subsequently in the *Decretum Gratiani* and quoted as c. 15, C. XXXV., q. 2, 3. It reads as follows:

> "Si vir et uxor non jam duo sed una caro sunt, non aliter est nurus deputanda quam filia."

Henceforth, not marriage, but carnal intercourse, will begin to be regarded as the root of

* Wernz, *Jus decretalium*, IV., 654, nota (22).

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affinity by ecclesiastical lawyers and writers. Over and over again the words are repeated in ecclesiastical laws. One of the chief authorities for the ecclesiastical rule of affinity was an apocryphal letter attributed to Pope Gregory and given by Gratian as c. 1, C. XXXV., q. 10.

> "Si una caro fiunt [the Pope is made to say] quomodo potest aliquis eorum propinquus pertinere uni, nisi pertineat alteri? Hoc minime posse fieri credendum est. [Then a conclusion is drawn from the doctrine.] Porro uno defuncto in superstiti affinitas non deletur, nec alia copula conjugalis affinitatem prioris copulae solvere potest."

Another famous text attributed by Gratian to Pope Gregory, but which in the judgment of Mansi belongs to Pope Zachary (A.D. 741-752) begins thus:

> "Porro de affinitate, quam dicitis parentelam esse, quae ad virum ex parte uxoris, seu quae ad uxorem ex parte viri pertinet, manifestissima ratio est quia si secundum divinam sententiam ego et uxor mea sumus una caro profecto mihi et illi mea suaque parentela propinquitas una efficitur."*

Canon 13 of the Council of Compiègne, held in the year 757, clearly indicates that then affinity arising from illicit intercourse constituted a diriment impediment of marriage in the law of the Church. A decree attributed by Gratian to Pope Gregory, but which probably belongs to the same

* c. 3, C. XXXV., q. 5, *Decreti Gratiani.*

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period as the above-quoted Council of Compiègne, makes no distinction between affinity arising from lawful marriage and from fornication. The terms are very sweeping and drastic.

> "Nec eam quam aliquis ex propria consanguinitate conjugem habuit, vel aliqua illicita pollutione maculavit in conjugium ducere ulli profecto licet Christianorum aut licebit, quia incestuosus est talis coitus et abominabilis Deo et cunctis hominibus (c. 10, C. XXXV., q. 2, 3)."

According to chapters 13 and 14, C. XXXV., q. 2, 3, a man committed incest equally by sinning with his wife's relations by blood and with his own. Some modern writers have attributed the law of affinity arising from fornication to the false Decretals. What has been said shows that the law of the Church on the point was well established long before the middle of the ninth century, when the false Decretals made their appearance.

Sanchez* defines affinity as, "Propinquitas personarum ex carnali copula proveniens, omni carens parentela." He says that the definition was accepted by St. Thomas and other theologians and by professors of both canon and civil law. It is true that subsequently he admits that Tancred and Vincent maintained that affinity arose only from lawful marriage and quoted the Roman law in proof of their opinion. But the Archdeacon, says Sanchez, deservedly reprehends these doctors, and all other doctors admit that affinity arises from fornication as well

* *De matrimonio*, lib. VII., disp. 64.

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as from conjugal intercourse. The way in which Sanchez speaks of the opinion which he rejects seems to show that when he wrote the tradition that there could be any opinion on the question different from that which was commonly received had been almost lost.

Starting from the principle of *duo in carne una*, a second and even third kind of affinity was obtained. Benedict XIV. illustrates this threefold affinity by the following example. Titius, the brother of Caius, marries Bertha, and the marriage is consummated. Bertha contracts the first kind of affinity with Caius. Titius dies and Bertha marries Sempronius. Sempronius contracts the second kind of affinity with Caius and all the relations of Titius. Bertha dies and Sempronius marries Naevia. Naevia contracts the third kind of affinity with Caius and the relatives of Titius. The second and the third kind of affinity were abolished by the fourth Council of the Lateran in A.D. 1215, and since that time it has been admitted as an axiom that, *Affinitas non parit affinitatem.*

Owing especially to the influence of the Germanic tribes during the sixth and seventh centuries the impediment of consanguinity was greatly extended. The impediment of affinity soon followed that of consanguinity, and in the middle of the twelfth century, when Gratian wrote his *Decretum*, both impediments extended to the seventh degree in the collateral line.

The fourth Council of the Lateran (A.D. 1215) restricted both consanguinity and affinity to the fourth degree as diriment impediments of marriage. The Council of Trent restricted the impediment of affinity to the second degree when it

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had arisen from illicit intercourse. As we have seen, in the new Code of Canon Law, affinity arising from illicit intercourse is abolished; and affinity arising from marriage is restricted to the first and the second degree.

A practical case will help us to realize some of the important consequences of the changes in the law of affinity which have been made by the new Code.

Titius committed fornication with Bertha in the year 1917. Subsequently he married Titia, the sister of Bertha. He now comes to confession for the first time since he committed sin with Bertha. How is he to be reconciled?

If Titius married Titia after the new Code came into force on May 19, 1918, and he is sorry for his past sins, he may be absolved without more ado. He had contracted affinity with Titia on account of his sin with Bertha, but when he married, that affinity was no longer a diriment impediment of marriage, and his marriage was lawful and valid.

If, however, the marriage took place before May 19, 1918, it was invalid, because affinity in the first degree in the collateral line arising from fornication was then a diriment impediment of marriage. It is no longer a diriment impediment now, and so the marriage may be convalidated without any dispensation. We presume that the impediment and the invalidity of the marriage are occult. In such a case the marriage may be convalidated by the private renewal of consent on the part of Titius, since we presume that Titia still maintains her consent to the marriage (Canon 1135, § 3).

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CHAPTER IV

THE NEW CODE AND THE "IMPEDIMENTUM CRIMINIS"

BOTH Canon Law and Moral Theology give rules for the leading of a good life and attaining salvation. The two sciences depend on each other and assist each other. Antecedently to the commission of crime they both seek to prevent it. But consequently to crime being committed a slight divergence of aim sometimes makes its appearance. Canon Law seeks to discover the crime and bring it home to the criminal with a view to his punishment, the restoration of public order, and the prevention of the repetition of the crime for the public good. Moral Theology seeks to bring the culprit to repentance, to forgive the sin, and to put the sinner in the way of leading a good life for the future. Occasionally the public interest conflicts with the private good of the delinquent, and because there is a difference of aim, a difference of opinion will begin to appear between the Canonist and the Moralist. If this tendency is recognized by men of broad views, no great harm will follow; but if it is not recognized, there may be an occasion of quarrelling. Sometimes bishops and even the authorities in Rome are blamed for action which seems harsh to the individual, while in reality the public good left them no choice in the matter.

These general principles are important and I will try to illustrate them from the diriment impediment of marriage which is called "crime,"

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and then inquire whether any change has been made in the matter by the new Code of Canon Law.

In Canon 1075 of the new Code we read:

> "Those cannot contract marriage validly who, during the existence of the same lawful marriage have committed adultery with each other and promised each other to marry, or have attempted marriage even though only civil marriage."

The object of this law is thus described by Cardinal Gasparri in his book on Marriage:

> "The Church has made the guilty parties incapable of marrying each other as a penalty for committing the crime, as a protection for the innocent spouse, and because such a marriage would be publicly scandalous and harmful. Doctors disagree as to which was the primary, which the secondary object of the Church; we are of opinion that the Church intended and obtained all those objects at one and the same time by this incapacity. What some say, viz., that this impediment is rather an incapacity than a penalty, or *vice versa*, is without meaning if the matter be examined more closely; for this impediment, like all the other diriment impediments, is an incapacity purely and simply; and yet the Church made it both as a penalty for crime and on account of the other objects indicated above, and so in truth this incapacity is a penalty."*

* *De matrimonio*, n. 642.

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A difference between the canonist's and the moral theologian's point of view emerges in the question whether ignorance of this impediment of crime excuses guilty parties from incurring it. Such differences are frequently referred to as differences between the external and the internal forum.

Cardinal Gasparri tells us that the question whether ignorance excuses guilty parties from contracting this impediment does not concern the external forum, but only the internal.* Wernz agrees. He writes:

> "Ignorance cannot successfully be alleged in the external forum of the Church as a cause excusing the guilty from this annulling law. For the ecclesiastical laws by which the impediment of crime has been made never mention such an excuse. The rule of law is—Ignorance of fact but not ignorance of law excuses (R. J. 13 in VI°.). Besides, the Datary, the Penitentiary, and the Bishops' Courts never take into consideration knowledge or ignorance of this impediment, but in particular cases grant their dispensations absolutely, and not as a measure of precaution in the impediment of crime. Finally, although the impediment of crime secondarily has the character of an extraordinary vindictive penalty, yet principally it is a sort of condition or an incapacity on account of the unbecomingness inherent in such a marriage; but ignorance does not excuse from laws by which incapacity is established on account of public

* *De matrimonio*, n. 657.

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indecency, although it may excuse from a medicinal penalty, and from an extraordinary vindictive penalty alone annexed to crime."*

It is then only a question of the internal forum and the distinction illustrates the difference between the points of view of the canonist and of the moral theologian. But even with regard to the *forum internum* Doctors do not agree in their answers to the question. De Angelis, Marc, Gury, Giovine, Feije, Schmalzgrüber, Reiffenstuel, Sporer, Suarez, Diana, and most other authorities on the subject are quoted by Cardinal Gasparri as maintaining that ignorance of the impediment of crime does not excuse the guilty from incurring it. On the other hand, Ballerini, D'Annibale, Lehmkuhl, Krimer, Navarrus, Pichler, and others maintain the opposite opinion. Cardinal Gasparri himself before the issue of the new Code thought that the latter opinion was both extrinsically and intrinsically probable. But although the impediment was doubtful and could not be urged, yet it was better to ask for a dispensation or a *sanatio in radice* as a precautionary measure.†

It will be instructive to examine how the moralists established their probable opinion, and we cannot take a better example than the method followed by Ballerini. He first of all shows that this impediment is a penalty, and then gives authority for holding that ignorance even of a penalty alone excuses from incurring it even in the case of an annulling law. Moreover, the

* *Jus Decretalium*, IV., n. 522.
† *De matrimonio*, n. 658.

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annulling of marriage in punishment of crime is not an ordinary, but an extraordinary penalty, such as no one would expect to be assigned in punishment of crime. But it was a common opinion that ignorance excused from such extraordinary penalties. If some theologians escaped this conclusion by maintaining that the impediment of crime was not a mere penalty, but that its principal object was to make married couples safer, Ballerini refutes them by quoting other theologians, such as Haunoldus, who maintained that it was a pure penalty. In such fashion do the supporters of the opposite opinion destroy each other's arguments. Some of them, says Ballerini, defended their opinion because, otherwise, they would be compelled to admit that ignorance of irregularity arising from crime excuses the guilty from incurring it, and this they were not prepared to admit. But, says Ballerini, it is a probable opinion that ignorance excuses from such an irregularity, and he quotes St. Alphonsus in proof of it. Some of the theologians on the other side defend their opinion by saying that the impediment of crime is rather an incapacity produced by law than a penalty. Ballerini answers that it makes no difference, for the same conditions are required for incurring this incapacity as for incurring a penalty, and what excuses from a penalty excuses from such an incapacity.

The gist of the argument may be put briefly thus: The impediment of crime is a penalty and an extraordinary penalty inflicted by ecclesiastical law. But ignorance excuses from such a penalty. Therefore ignorance excuses from incurring the impediment of crime. We shall

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presently see that whatever force there is in this argument has been taken out of it by several canons of the new Code. Even apart from the new Code the argument has its weak points. Granting that the impediment of crime is a penalty inflicted on the guilty parties, it is also something more. It is a measure intended to safeguard married life for the common good, and it annuls marriage because such a marriage would be a disgrace to public morality. Although there are good reasons for saying that ignorance should excuse from some penalties, for if the penalty is not known it cannot exercise its deterrent effect, yet it belongs to positive law to determine whether ignorance does excuse or not, and from what penalties. Especially if the penalty is an extraordinary one, such as no one would expect to be annexed to the crime, is there reason for saying that ignorance of it should excuse from incurring it. And yet, as Suarez drily remarks, we should be careful to limit this principle, as it certainly does not apply to the eternity of the punishments of hell in favour of one who is ignorant of that eternity. And after all it is not for the culprit to assess his own punishment. That is the function of the legislator and the judge.

It is generally admitted, even by those theologians who use them, that these arguments do not establish the certainty of the opinion that ignorance of it excuses from the impediment of crime.* They only make the opinion more or less probable so as to permit confessors who learn of the impediment from confession to leave penitents in good faith. But most authors taught

* Ballerini-Palmieri, *Opus morale*, VI., n. 1044.

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that it was advisable to procure a dispensation as a precautionary measure. Unless I am mistaken, the new Code has deprived the opinion of whatever degree of probability it possessed.

In Canon 2229 rules are given which tell us how far and when ignorance excuses from a penalty inflicted by ecclesiastical law.

CANON 2229.

"Affected ignorance, whether of law or of a penalty, excuses from no penalties *latae sententiae*. Ignorance of a law or even of a penalty alone excuses from no penalty *latae sententiae* if it were crass or supine; if it were not crass or supine it excuses from medicinal but not from vindictive penalties *latae sententiae*."

This canon settles the controversy as to whether ignorance of a penalty alone excuses a delinquent from incurring it. It also tells us that ignorance does not excuse from vindictive penalties. The impediment of crime is certainly a vindictive penalty *latae sententiae*, and so we must conclude that ignorance certainly does not excuse from it. Suarez, indeed, is quoted by Ballerini as maintaining that the impediment of crime is not a mere penalty, but that it is also "medicinal (so to say), inasmuch as it removes occasions of committing similar crimes." However, it is clear that Suarez here uses medicinal in a special sense defined by him in the words quoted, and not in the sense in which censures are called medicinal penalties in the Code. Censures are medicinal penalties in the sense that they tend to correct and overcome the

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contumacy of a delinquent. The Code does not adopt the opinion that ignorance of an extraordinary penalty excuses one from incurring it. But it expressly lays down the new rule that ignorance does not excuse from vindictive penalties like the impediment of crime.

Still more clear is Canon 16: "No ignorance of annulling or incapacitating laws excuses from them unless the contrary is expressly stated." And Canon 988: "Ignorance of irregularities, whether arising from crime or from defect and ignorance of impediments, does not excuse from them."

I think then that we may conclude that the new Code destroys all probability which the opinion may previously have had that ignorance excuses from the impediment of crime.

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CHAPTER V

FALSE ACCUSATION OF SOLICITATION AND THE NEW CODE

IN his Constitution *Sacramentum Poenitentiae*, issued on June 1, 1741, Pope Benedict XIV. decreed as follows:

> "And since wicked men are found who, moved by hatred or anger or other unworthy cause, or incited thereto by the wicked persuasion of others, or by their promises, flattery or threats, or by some other means, setting aside the terrible judgment of God and despising the authority of the Church, falsely accuse innocent priests of solicitation before ecclesiastical judges; therefore in order that such wicked audacity and so detestable a crime may be checked by the fear of the greatness of the penalty, whoever shall have disgraced himself by so execrable a crime, impiously calumniating innocent confessors himself or wickedly procuring that it be done by others, let him perpetually be without hope of obtaining absolution from any priest except when in danger of death, and such absolution we reserve to ourselves and to our successors."

By this decree the sin of false accusation of solicitation brought against a priest was reserved in a very special manner to the Holy See. Whatever may be said about the nature of reservation of sins in general, theologians commonly taught that this reservation of false accusation of solici-

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tation at any rate was penal, and therefore they concluded that ignorance of the reservation probably excused a culprit from incurring it.*

I propose in this paper tentatively to examine whether the New Code of Canon Law has made any change in this matter.

It is quite clear that some change has been made. Before the new Code came into force there was no ecclesiastical censure attached to the sin of false accusation of solicitation. Canon 2363 of the new Code punishes the sin by excommunication specially reserved to the Holy See.

CANON 2363

> "If anyone in person or through others lays a false accusation before superiors of the crime of solicitation against a confessor he incurs *ipso facto* excommunication reserved in a special manner to the Holy See, from which he cannot in any case be absolved unless he has formally retracted the false accusation and, as far as he can, repaired the damage done, if there was any, and moreover after a heavy and long penance has been given him."

Canon 2229 tells us how far ignorance excuses one from incurring this censure. "Affected ignorance whether of a law or of a penalty excuses from no penalties *latæ sententiæ*. Ignorance of a law or even of a penalty alone excuses from no penalty *latæ sententiæ* if it were crass or supine; if it were not crass or supine, it excuses from medicinal but not from vindictive penalties *latæ sententiæ*."

* Lehmkuhl, II., n. 407, ed. 9.

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A censure is a medicinal penalty and so ignorance will excuse one who falsely accuses a confessor of solicitation from the excommunication inflicted by Canon 2363 unless the ignorance be affected or crass and supine.

Hitherto when a sin was punished by a censure reserved to the Holy See, and on account of ignorance the censure was not incurred, the sin itself was not reserved and might be absolved by any confessor. However, by Canon 894 the sin of false accusation of a confessor of solicitation is reserved on its own account.

CANON 894.

> "The only sin reserved to the Holy See on its own account is a false accusation by which an innocent priest is accused of the crime of solicitation before an ecclesiastical judge."

The sin of false accusation of solicitation, therefore, is now reserved to the Holy See both on its own account and on account of the censure of excommunication annexed to it. Even when in a particular case the censure is not incurred, still the sin will be reserved to the Holy See unless there is some reason which excuses from this reservation. Will ignorance of the reservation excuse a culprit from incurring the reservation and enable any confessor to grant absolution without obtaining special faculties? This is a practical question which I wish to attempt to solve.

We may, I think, take it for granted that this reservation of the sin of false accusation of solicitation on its own account is an ecclesiastical

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penalty. Ordinarily, indeed, reservation of sins is not an ecclesiastical penalty. It is not mentioned among the ecclesiastical penalties contained in the new Code. As explained in Canon 893, reservation is the calling of a case before the tribunal of a superior or of his delegate, limiting the power of inferiors to give absolution in the case. The case is supposed to be one of importance, which can only be tried in a higher court. As a case of murder, for example, cannot be tried by magistrates, so a reserved case cannot be absolved by an ordinary confessor. Neither in one case nor in the other is this provision a penalty inflicted on the culprit. It is rather of the nature of a guarantee that the case will be duly tried on its merits and according to law. However, in the case of false accusation of solicitation, there are special reasons for holding that the reservation of this particular sin is an ecclesiastical penalty. One of the references subjoined to Canon 894 in Cardinal Gasparri's edition is to the Constitution *Sacramentum Poenitentiae* of Benedict XIV. quoted above. It is clear from the words quoted above that the Pope intended the reservation of this sin to the Holy See to be of the nature of an ecclesiastical penalty. The difficulty of getting absolution for the sin was intended to act as a deterrent. If anyone were guilty of the sin the reservation deprived him of the power and opportunity of obtaining absolution as easily as for other sins. We may, then, still hold that the reservation to the Holy See of the sin of false accusation of solicitation is an ecclesiastical penalty.

But to what class of ecclesiastical penalties does this reservation belong?

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Canon 2215 tells us that "an ecclesiastical penalty is the privation of some good for the correction of the delinquent and the punishment of a crime, inflicted by ecclesiastical authority." By Canon 2216 we are told that delinquents are punished in the Church by (1) medicinal penalties, or censures; (2) by vindictive penalties; (3) by penal remedies and by penances. According to Canon 2306 penal remedies are such preventive measures as Admonition, Correction, Precept, and subjection to Vigilance; while penances are imposed in the external forum that a delinquent may either escape a penalty, or may receive absolution or dispensation from a penalty which he has incurred, as we are informed by Canon 2312. It seems clear that a reservation of sin cannot belong to this third class of ecclesiastical penalties. It must be either a medicinal or a vindictive penalty.

According to Canon 2216, medicinal penalties and censures are synonymous terms. There are three kinds of censure—excommunication, suspension, and interdict. "A censure is a penalty," we are told in Canon 2241, "by which a baptized person, guilty of crime and contumacious, is deprived of certain spiritual goods, or of those annexed to spiritual goods, until, receding from his contumacy, he is absolved." The element which distinguishes a censure from other ecclesiastical penalties is the contumacy of the delinquent. He is formally disobedient to ecclesiastical authority and refuses to submit. As soon as he submits, the contumacy ceases, and he should be absolved. Apart from reservation, any confessor may absolve from a censure, and, on the contumacy of the delinquent ceasing, a con-

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fessor should grant absolution. Thus a censure or medicinal penalty is quite different from the reservation of a sin. The absolution of a reserved sin does not depend on the relinquishing of contumacy. It depends on the power of the confessor. If one who has falsely accused a confessor of solicitation wants absolution, it is not sufficient for him to repent and to abandon his contumacy. He must approach the Holy See or its delegate for such a case and obtain absolution from that source. Reservation of such a sin then, although a penalty, is not a medicinal penalty. It is neither an excommunication nor a suspension nor an interdict. It only remains that it must belong to the class of vindictive penalties.

Canon 2286 defines vindictive penalties as "those which directly tend to the expiation of a crime, so that their remission does not depend on the cessation of the delinquent's contumacy."

The Code does not give us an exhaustive list of vindictive penalties. Canon 2291 gives a list of those which chiefly affect the faithful in general. They are: Certain special kinds of interdict, penal translation or suppression of the seat of a bishopric or parish, legal infamy, privation of ecclesiastical burial, privation of Sacramentals, privation or suspension for a time of an ecclesiastical pension, removal from the exercise of ecclesiastical legal acts, inability to receive ecclesiastical favours, privation of a favour already obtained, privation of the right of precedence, and a money fine.

Canon 2298 gives a list of vindictive penalties which affect clerics only. They are: Prohibition of the exercise of sacred functions except in a certain place, perpetual suspension or suspension

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for a definite period, penal translation from an office, privation of a right annexed to an office, inability for certain offices, penal privation of office, prohibition of dwelling in a certain place, precept to dwell in a certain place, privation of the ecclesiastical dress for a time, deposition, perpetual privation of the ecclesiastical dress, degradation.

Although reservation is not mentioned, and, indeed, as we have seen, it is not a penalty of its own nature, yet when inflicted on a culprit as a penalty for crime it is similar to several of the vindictive penalties in the above lists. It approaches the nature of privation of Sacramentals in the first list, and privation of a right annexed to an office in the second. It would seem, then, that in the special case in which by the will of the legislator a reservation was inflicted as a penalty for crime, this reservation is a vindictive, not a medicinal penalty. But according to Canon 2229 ignorance does not excuse from vindictive penalties, and therefore the sin of falsely accusing a confessor of solicitation will be reserved to the Holy See even if the offender knew nothing of the reservation. It may be that this was specially intended by the Holy See, and was at least one reason why this sin alone was reserved to the Holy See on its own account.

My solution of the question is tentative, and if anyone has a different opinion on the matter, I hope he will give us his reasons for holding it.

It is sometimes said that as soon as the Church issues a new law, moral theologians set to work to whittle it away. I believe that the saying is a slander on a great and distinguished body of men. Moral theologians know that the laws of

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the Catholic Church tend to the sanctification and salvation of souls, and they would as soon attempt to whittle them away as they would attempt to whittle away the laws of Our Lord Himself. Any theologian who is worthy of the name tries to get at the mind of the Church, which is expressed in her laws.

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CHAPTER VI

THE NEW CODE AND THE "IMPEDIMENTUM DISPARITATIS CULTUS."

WRITING to the Christians of Corinth, St. Paul says: "Bear not the yoke with unbelievers."* In these words, and those which follow them, the Apostle tells the Corinthian Christians that they should enter into no intimate union, and especially marriage, with non-baptized persons. The danger of perversion, the difficulty of bringing up children in the faith and practice of Christianity, if one of the parents were an unbeliever, and the communicating with unbelievers in sacred rites, were the reasons of this prohibition. These reasons show that the prohibition is of natural and divine law. However, a marriage entered into in spite of the prohibition would be valid, though unlawful. In other words, difference of worship is only a prohibitory impediment by natural and divine law, not a diriment impediment of marriage.

During the early Christian centuries this prohibitory impediment was frequently insisted on in local councils of the Church and even in the imperial legislation of the later Roman Empire. Between the eighth and the twelfth century, marriage contracted in spite of the prohibition began to be looked upon as null and void, as no marriage at all. The change was gradually introduced by custom, and so it came to pass that about the twelfth century difference of worship became a diriment impediment of

* 2 Cor. vi. 14.

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marriage by a universal custom of the Church. In the sixteenth century, when a considerable number of Japanese were converted to the Christian faith, the question arose whether this customary law bound them. It was decided that they were bound by it just as by other universal laws of the Church, whether written or unwritten. Henceforth it was a settled principle of Catholic marriage law that a baptized Christian could not validly marry a non-baptized person without a dispensation from the competent authority.

There is no room for difficulty in this impediment of Christian marriage when the baptism of one of the parties is certain and the non-baptism of the other is likewise certain. But great difficulties arose when the baptism was uncertain. Cases of such uncertainty would be comparatively rare when both parties were Catholics, and if the difficulty arose it could easily be removed by making certain of the baptism by administering it conditionally. Some priests did this even in the case of the doubtful baptism of non-Catholics, but the practice was condemned by the Roman authorities. In modern times marriage cases wherein difficulties arose from doubtful baptism were by no means uncommon. In course of time a great number of decrees on such cases were issued by the Roman authorities, and, based on these, certain rules were formulated by canonists and theologians or even by the Roman Congregations themselves.

In settling such cases the Roman Congregations constantly adhered to and applied the principle—*Doubtful baptism must be held as valid baptism with regard to the validity of marriage.*

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In the application of this principle to the solution of marriage cases it was presupposed that careful inquiries had been made concerning the baptism of the parties. Sometimes these inquiries were impossible, evidence on the fact of baptism or on its validity could not be obtained. The Bishop of Savannah reported to the Holy See that cases like the following frequently occurred in his part of the United States: Two non-Catholics married and afterward separated. One of them subsequently wished to become a Catholic and to marry a Catholic. It was sometimes impossible to obtain evidence concerning the baptism, especially of the other party to the previous marriage. The bishop asked whether in such cases of marriage between non-Catholics he might make use of presumptions concerning the baptism of the parties, founded on the religious character and practice of the parents or of the sect to which they belonged, and of the prescriptions of their rituals. The Sacred Congregation of the Holy Office on August 1, 1883, answered in general that this might be done, after inquiries had been made in each particular case. Further on we shall have occasion to refer again to this well-known decree of the Holy Office.

Applying the principle that doubtful baptism must be held to be valid baptism with respect to the validity of marriage, it follows that marriage between a party certainly baptized and another doubtfully baptized must be held to be valid. Marriage must also be held to be valid when contracted between two parties both doubtfully baptized. Marriage between one doubtfully baptized and another certainly not baptized will be invalid.

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Before the issue of the new Code of Canon Law there was great disagreement among canonists and theologians as to the meaning of these rules, based on numerous decrees of the Roman Congregations, and on which all were agreed. There were two main currents of opinion as to the meaning of the rules. According to one opinion, the rules were to be taken in an absolute sense, so that if, for instance, at the time of marriage one of the parties was certainly baptized and the other doubtfully baptized, the marriage was and remained valid even though subsequently it was discovered for certain that the latter party had never been baptized. This was the opinion of Cardinal Gasparri.* The other opinion held that the sense of the rules was that such marriages were to be held valid as long as the doubt remained about the baptism. There was a presumption of law that such marriages were valid as long as the doubt remained, but as a presumption of law yields to the truth, such marriages were to be held invalid if afterward it became certain that one of the parties was certainly baptized, and the other was certainly not baptized. This was the opinion of Wernz and of others.†.

No great difficulties could ordinarily arise from the application of the rule that marriage between one certainly baptized and another doubtfully baptized must be looked upon as valid. It was but an application of the principle that in doubt sentence must be given in favour of marriage. The same may be said of cases where both parties were doubtfully baptized.

* *De matrimonio*, n. 597.
† Wernz, *Jus Decretalium*, IV., n. 508.

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But there were great difficulties about the third rule, which decided that marriage between one doubtfully baptized and another certainly not baptized was invalid. It is difficult to understand how such a marriage could remain invalid, even if it were afterward discovered that in fact neither party was baptized. The marriage would then be a legitimate marriage between two unbaptized persons over whom the Church has no jurisdiction. Cardinal Gasparri admits that in this case such a marriage would in fact be valid. Yet several decrees are quoted which seem to apply the rule absolutely without reserve. One of these is the following: An Anglican, about the validity of whose baptism there was grave doubt, married an Anabaptist woman who certainly was not baptized. They quarrelled and separated. The man afterward married a Lutheran and expressed a desire to be received into the Catholic Church. The question as to which marriage was valid was submitted to Rome. On July 20, 1840, the Holy Office answered: Provided that it was certain that the Anabaptist was not baptized, the first marriage was invalid; and provided that there was no other diriment impediment between the parties, the second was valid. Here was a question of previous marriage, a diriment impediment to a second marriage by natural and divine law. There was grave doubt as to whether the Anglican had been validly baptized. And yet, on the ground that the Anabaptist certainly had not been baptized, the man is allowed to remain with his Lutheran wife. There are other decrees of the same import. On them and on other grounds Lehmkuhl based his theory that doubt-

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fully baptized persons were subject to the jurisdiction of the Church by divine law. The contention was novel, and it has not met with the approval of canonists and theologians in general.

Moreover, the rule that marriage between one party doubtfully baptized and another certainly not baptized is invalid seems to expose the validity of marriage too much to subjective estimates of greater or less or sufficient probability. The rule seems to have disappeared from the legislation of the new Code.

The law of the Church on difference of worship in its relation to marriage is now contained in Canons 1070 and 1071 of the new Code. We are only concerned here with Canon 1070. There are two sections of this Canon, the first of which is as follows:

> "Marriage contracted by a person not baptized with a person baptized in the Catholic Church or with a convert to it from heresy or schism is null."

The diriment impediment of difference of worship therefore exists now by the written law of the Church between a non-baptized person and one baptized in the Catholic Church or one converted to the same. This law governs cases wherein the Catholic baptism of one of the parties is certain and the other is certainly not baptized.

The second section contains the law which now governs cases wherein one of the parties was only commonly held to be baptized or his baptism was doubtful at the time of the marriage. It is as follows:

> "If a party at the time of contracting marriage was commonly held to be baptized

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or his baptism was doubtful, the validity of the marriage must be upheld in accordance with Canon 1014 until it is proved for certain that one of the parties was baptized and the other not baptized."

Canon 1014 merely states that marriage is favoured by law, and that, in doubt, its validity must be upheld until the contrary is proved. Now, therefore, in case of doubt concerning the baptism of one of the parties to a marriage, the validity of the marriage must be upheld in all cases until it is conclusively proved that one of the parties has been baptized and the other has not been baptized. There is a presumption of law that a marriage is valid when one of the parties is doubtfully baptized, and it must be held to be valid as far as this impediment of difference of worship is concerned until it is proved that one of the parties was baptized and the other not baptized, and the existence of the impediment is established for certain.

Does this rule apply only to Catholics, or does it apply to Catholics and non-Catholics alike? Fr. Ferreres, in his *Epitome*, recently issued, prints the two sections of the Canon as one, and then says: "Unde validum est matrimonium inter haereticum baptizatum (extra Ecclesiam Catholicam nec ad hanc conversum) et non baptizatum."*

It seems to me that we must distinguish between the two sections of the Canon. The first section refers only to one who has been baptized in the Catholic Church or who has been converted to it from heresy or schism. It asserts

* *Epitome*, n. 931.

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nothing about non-Catholic baptized persons. Very frequently, so frequently that in many dioceses it is accepted as the rule, there is room for doubt as to the fact of baptism in the case of non-Catholics, or at least as to its validity. At most, non-Catholics will be commonly held to be baptized if their baptism is not actually doubtful. It seems to me, then, that non-Catholics are chiefly referred to in Section 2 of the Canon. The baptism of Catholics is usually certain, and only in comparatively rare instances can it be said of them that they are commonly held to be baptized; and rarer still are cases of doubtful baptism among Catholics. Section 2, then, should be applied to non-Catholic marriages, as to that of the Anglican and the Anabaptist quoted above, when occasion requires. I am led to this conclusion by the following arguments. As Fr. Ferreres says, heretics and schismatics must still in general be considered to be subject to ecclesiastical law unless they are expressly excepted. They are expressly excepted in the provisions of the *Ne temere* decree as embodied in the new Code, but they are not expressly excepted from this Section 2 of Canon 1070.

The law is general, and *Ubi lex non distinguit nec nos distinguere debemus.* Indeed, as already observed, it seems specially meant for cases of non-Catholic marriages which for one reason or another come under the judgment of the Church. Such cases are very common in modern times; they have been legislated for in the past, as we have already seen. It is inconceivable that the new Code provides us with no rules by which to decide practical and important cases when they arise.

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Cardinal Gasparri, in his references to the Code, gives some dozen decrees and instructions on which Section 2 of Canon 1070 is based. At least one, that of the Holy Office, August 1, 1883, to the Bishop of Savannah, refers exclusively to non-Catholic marriages. It seems to me, then, that though the Church asserts nothing expressly about non-Catholic marriages and this impediment of difference of worship, yet she gives us a rule whereby we may decide the practical difficulties which frequently arise from non-Catholic marriages. Applying that rule, I should say that marriage between a person certainly and validly baptized, even outside the Catholic Church, and another certainly not baptized, is invalid. But in cases where baptism outside the Church or within the Church is not certain or not certainly valid, the validity of the marriage must be upheld until it is proved that one of the parties was baptized and the other not baptized.

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CHAPTER VII

SOCIALISTS, CHRIST, AND THE CHURCH

IN every question much depends on the point of view adopted by the inquirer. It is a trite saying that the Catholic Church and her teaching look very different to the Catholic who regards them from the inside of the Church, and to the non-Catholic who regards them from the outside. The Catholic is satisfied that the Gospel preached to him by the Church is the Gospel preached by Jesus Christ. He knows by experience that it is a practical and workable system, and, believing what he does about Jesus Christ, he is sure that it would be rank blasphemy to believe that Jesus Christ preached anything that was not practical and workable.

On the other hand, many outside the Church, and Socialists especially, affect to regard Jesus Christ as a dreamer. His Gospel was above all a revolution in economic theory. He was, they say, a Communist who condemned private property and strove not only to subjugate wealth but to annihilate it. He taught that all attachment to wealth was sinful, and that poverty, actual poverty, was a necessary condition of admittance into the Kingdom of Heaven. He condemned riches in themselves. In all this He was followed by His Apostles and by the Fathers of the early Church. The first Christian Churches were societies of communists. It was only when Christianity became the fashionable religion of the Roman Empire that the Church accommo-

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dated her doctrine to the requirements of the altered circumstances. This had already been done for the great trading centre of Egypt by Clement of Alexandria. This Father, who lived at the end of the second century, wrote a little book on "Who that is rich shall be saved?" With Alexandrine subtlety he succeeded in accommodating the Gospel of Christ concerning wealth to the needs of a rich trading community of Christians. His doctrine was adopted by the mediæval and modern Christian Church. So, in effect, said Signor Nitti some years ago, and the view has been substantially adopted by Mr. Butterworth in his dainty little book on Clement of Alexandria, recently issued.

The charge that the Catholic Church has changed the Gospel of Christ has, of course, frequently been made before. After years of study Cardinal Newman satisfied himself that she had not changed but only developed it. That is true of other doctrines and of the doctrine on poverty and wealth. One great obstacle which prevents non-Catholics from seeing the truth is their rejection of counsels in the Gospel. The Protestant theory of Gospel morality is that all good is of precept, none is merely recommended and of counsel only. This theory prevents them and those who follow them from seeing the point in the incident between Christ and the rich young man. The text is classical as bearing on the question at issue. The writers with whom I am dealing see in it a clear proof that Christ taught that the renunciation of wealth is a necessary condition for admittance into the Kingdom of Heaven, and that a rich man cannot be saved. Clement of

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Alexandria, and Catholic exegetes generally, show that it proves nothing of the sort.

The rich young man asked what he had to do to have everlasting life. "If thou wouldst have everlasting life, keep the Commandments," was the answer. "Which Commandments?" again asked the young man. "The Ten Commandments of the Decalogue," answered the Master. "All those I have kept from my youth. What is yet wanting to me?" said the young man. Jesus looked upon him with a look of approbation and love, and then He said: "If thou wouldst be perfect, go sell what thou hast and give it to the poor." He did not absolutely command him to sell what he had; He only bade him do it if he desired to do something more than what was commanded and strictly necessary to gain everlasting life. Moreover, it should be noted that Jesus did not command him to put the proceeds of the sale into the common fund. He told him to give them to the poor. Our Lord was no Communist. But, it is argued, the Gospel narrative goes on to say that it is easier for a camel to pass through the eye of a needle than for a rich man to enter into the Kingdom of Heaven. Here the Socialist stops, but we should go on to the end of the narrative.

The disciples wondered very much, we are told, at hearing this proverb, which seemed to make salvation impossible for the rich, and they asked Him: "Who, then, can be saved?" "With men," said Our Lord, "this is impossible, but with God all things are possible." Even the rich man may be saved by the grace of God. The same conclusion follows from the story of the rich Zaccheus, and it is not contradicted by the

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parable of Dives and Lazarus if no part of the Gospel narrative is omitted, as is done by Signor Nitti. St. Paul instructed his disciple Timothy how to deal with the rich, but he did not tell him to compel them to renounce their wealth. The communism of the Church of Jerusalem was local and not obligatory, as is shown by what St. Peter said to Ananias and Sapphira. What Socialists assert about the early Church Fathers is refuted by examining their whole teaching about wealth. Dr. J. Ryan's little book, "Alleged Socialism of the Church Fathers," will enable the English reader to do this at small trouble and expense to himself. L. Garriguet's little book on "The Social Value of the Gospel" is also well worth reading.

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CHAPTER VIII

THE PROFITEERING ACT, 1919

THE Profiteering Act gives power to the Board of Trade "to receive and investigate complaints that a profit is being or has been made or sought on the sale of the article which is, in view of all the circumstances, unreasonable;

"To declare the price which would yield a reasonable profit;

"And to require the seller to repay to the complainant any amount paid by the complainant in excess of such price" (Sec. 1).

Some very old doctrines of Catholic moral theology are implied in these passages of the Act. During the last century those doctrines were generally rejected by the dominant school of political economists, and in too many cases they were neglected in practice by sellers of commodities. Experience has shown once again that retribution lies in wait for those who violate the precepts of the moral law. We must either return to the teaching and observance of those precepts or we shall inevitably pay the penalty for transgressing them.

According to the time-honoured teaching of Catholic moral theology, there is a fair, reasonable, and just price for all commodities in common use. That fair, reasonable, and just price may be fixed by law, and, if it is so fixed, it is matter of conscience to keep to it in buying and selling as long as the law is not obsolete. If the price is not fixed by law, it is fixed by the

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common estimate of those who are acquainted with all the circumstances which affect the question. The common estimate is a moral estimate, and it does not determine the price with mathematical nicety and precision. Much depends on place and time and mode of sale, on supply and demand, as well as on the varying quality of the goods. There will generally be a higher price, more than which the article does not usually fetch. There will be a lower limit below which the price does not usually sink. And there is the mean price which lies anywhere between the two extremes. There will be no injustice done provided that the price keeps within those limits, but if they are exceeded injustice is committed and restitution must be made to the injured party. That, put very briefly, was the old Catholic doctrine of the just price of commodities.

But according to Dr. Cunningham, an authority on economics, during the last century and a half or so the world had outlived that old doctrine. It had come to see that there was no such thing as the just price of commodities. The price of things depended on supply and demand, and was fixed proximately by the higgling of the market or the competition between sellers and buyers. The sellers tried to get as much as they could for their goods, and the buyers tried to get them as cheaply as they could. That was business. It was all a matter governed by the laws of political economy, with which justice and morality had nothing to do.

In this, of course, political economy was wrong. All man's actions are subject to the moral law of justice. We may indeed abstract from the

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moral aspects of buying and selling for the purposes of discussion, but the process is dangerous, as the instance before us shows. If political economists abstract from the law of justice, many dealers will make it an excuse for disregarding the law of justice in their transactions. It is notorious that this was done. Moralists might point out, as they did, that the higgling of the market, if buyers and sellers were honest and just, implied that there was a common standard of fairness and reasonableness by which to judge of the correct price of articles. Both buyers and sellers, if they were competent, had that standard in mind when they began to bargain. The higgling took place in order to adjust the precise sum of money which was an equivalent for the value of the article in the particular circumstances of the sale. But there were too many business people who turned a deaf ear to the moralists, and excused their profiteering with the plea that business is business.

If the Profiteering Act succeeds in forcing dealers to pay attention to the rules of justice as well as to the maxims of business, it will render a great service to the cause of morality as well as to the pockets of the consumers.

In his book on "Political Economy," C. Devas asserted that a jury of honest men could without difficulty settle what the fair price of an article should be. Section 2 of the Profiteering Act empowers the Board of Trade to set up such juries under the name of "local committees."

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CHAPTER IX

STRIKE ETHICS

ALL our actions, whether done singly or in combination with others, are subject to the moral law. The moral law is the law of God, and all men, singly and collectively, are subject to the law of their Creator and Lord. If the moral law is broken the culprit will inevitably have to pay the penalty. One of the plainest lessons of that great truth has been enforced again by the Great War.

There are some actions which are always bad, like murder and theft. It is never right under any circumstances to commit murder or theft. Some actions are always right, such as the love of God. There are other actions which in general and in the abstract are neither good nor bad. They become good or bad according to the circumstances in which they are done. Among these latter actions are strikes.

Let us apply these general principles of Catholic morality to the question whether and when it is wrong to strike. In their late unfortunate strike some of the Liverpool policemen broke their oath. When they entered on their office they promised under oath to serve the King faithfully, to help to preserve the peace, to repress and to punish crime. If they had any grievances there were means of making them known and obtaining redress for them. If they were dissatisfied with the conditions of service they were at liberty to leave it. Their strike exposed the citizens of Liverpool to riot, robbery, and theft

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at the hands of the elements of disorder. These circumstances show that the police strike was morally wrong.

If we pass on to industrial strikes, we know from too much experience that they cause great loss, both private and public. The men lose their wages, the employers lose their trade and its profits, the country is deprived of the goods which it requires. This is clear enough from the coal miners' strike. There is a shortage of coal, and so the price of it rises. Everyone in the country suffers in consequence. Large numbers of men are idle, and according to the old saying, "An idle brain is the devil's workshop." The devil generally finds something for the idle striker to do: he incites him to drink, to riot, and to interfere with the natural liberty of others by intimidation or by preventing them from accepting work when they wish to do so. Class envy and hatred, too, are increased by strikes. The prosperity and happiness of the country depend on union and good will among all the citizens. Strikes prevent union and good will. Attention must be paid to the aim and object of a strike. A strike to compel the Government to withdraw British troops from Russia would be unwarrantable. The strikers could not possibly know the reasons which govern such political questions, and no section of the community has the right to usurp the functions of government. Sometimes the object of a strike is a small increase of wages which is not commensurate with the grave losses involved, or it takes place because somebody's dignity has been wounded. He was not consulted when he thought that he should have been consulted. Contracts and

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agreements once lawfully entered into are not mere scraps of paper. They are sacred engagements to which an honest man will be faithful. When employers and employed have entered into a lawful agreement for the continuance of work, neither party should break it as long as it remains valid and operative.

In spite of all this, it may sometimes be lawful to have recourse to a strike for the defence of some important right or to obtain relief from some gross injustice. But because, as we have seen, so many evils commonly attend strikes, the strikers should make sure of their ground, and use all means possible to obtain their just demands before resorting to a strike. A strike will be the last resort of a good citizen and of a good man.

We should all strive to do what we can to prevent industrial war by cultivating good will and good feeling between the different classes of society. All are brethren. Something can be done towards the same end by moderating our greed of money. Money is not the only nor is it the chief good even in this world.

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